

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NICK GIOIA, et al.,

Plaintiffs,

-against-

PROJECT VERITAS, et al.,

Defendants.

**ORDER**

22-CV-06710 (PMH)

PHILIP M. HALPERN, United States District Judge:

Counsel for all parties appeared in person for a pre-motion conference today.

For the reasons stated on the record, after hearing from counsel and considering the parties' written submissions, defendants' motion to strike allegedly improper references to privileged information in the Second Amended Complaint (Doc. 51) is DENIED.

Based upon plaintiffs' counsel's representations in writing and on the record, the concessions set forth in plaintiffs' February 28, 2023 letter (Doc. 62) are binding: there is no federal claim prior to August 2019, no state law claim prior to August 2016, and plaintiff Schuy has no federal claim.

The Court granted defendants leave to move to dismiss, limited to the issues of the releases, ERISA claim, and claims against the individual defendants. The motion to dismiss shall be served, not filed, by April 26, 2023; opposition shall be served, not filed, by May 9, 2023; reply shall be served by May 23, 2023; and all papers shall be filed on the reply date, May 23, 2023.

The Court reaffirmed that defendant S2 HR Solution 1A, LLC was dismissed from this action pursuant to Rule 4(m) and leave to add it as a party to the Second Amended Complaint was not granted. Nonetheless, based upon plaintiffs' counsel's representations concerning settlement

with that entity, the Court permitted plaintiffs to, by April 14, 2023, file a *Cheeks* submission, which shall include a joint fairness letter and fully executed settlement agreement for the Court's review and approval.

If a *Cheeks* submission is not filed by April 14, 2023, because S2 HR Solution 1A, LLC was dismissed from this action pursuant to Rule 4(m), leave to add it as a defendant was not granted, and in any event, there is no indication on the docket that plaintiffs served S2 HR Solution 1A, LLC with the Second Amended Complaint, that entity will again be dismissed from this action, unless proper application for procedural relief (supported by Second Circuit authority) is made by plaintiffs on or before April 14, 2023.

See Transcript.

The Clerk of Court is respectfully requested to terminate the motion pending at Doc. 51.

**SO ORDERED:**

Dated: White Plains, New York  
April 4, 2023



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Philip M. Halpern  
United States District Judge